



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 17 1992

OFFICE OF ENFORCEMENT

MEMORANDUM

SUBJECT: Consent Decree Provisions Requiring Information on
Unsuccessful Demolition/Renovation Bids in Asbestos
NESHAP Civil Actions

FROM: Michael S. Alushin *M.S. Alushin*
Enforcement Counsel for Air

John B. Rasnic, Director *Richard Bondi*
Stationary Source Compliance Division

TO: Addressees

The purpose of this memorandum is to request that the Regional offices refrain from including provisions in consent decrees that require demolition or renovation contractors to report all unsuccessful bids for asbestos renovation or demolition work to EPA during the pendency of the decrees. These unsuccessful bid submission provisions have been included in consent decrees negotiated in settlement of civil actions under the Clean Air Act for violations of the asbestos NESHAP. The Department of Justice (DOJ) has objected to the practice of including this provision in consent decrees. After evaluating DOJ's rationale and after consultation with the Regional Counsel Air Branch Chiefs and the Regional program offices, we have decided not to pursue this issue further with DOJ.

Under the provision in question, the defendant contractor agrees to provide reports, at specified intervals, that list all unsuccessful bids, offers, quotations or estimates, written or verbal, that the contractor gives for any and all asbestos work. The reports are typically required to include the name, address, and telephone number of the entity requesting the bid offer, quotation or estimate of asbestos removal, as well as the property name, address, project manager and quantity of asbestos to be removed. The reports are also required to include the name, address and telephone number of the successful bidder-contractor, if known. Under the unsuccessful bid submission provision, the contractor was required to certify the accuracy of this information. The underlying rationale for this provision was to assist the Agency in identifying potential underbidding by demolition contractors, whose low bids might signify an intent to circumvent the asbestos NESHAP.

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The DOJ objects to the inclusion of unsuccessful bid submission provisions in consent decrees for two reasons. First, these provisions do not seek to ensure compliance by the violator subject to the consent decree, but by contractors with no connection to the current enforcement action. Second, the relief obtained through these provisions exceeds the relief afforded to the Agency under the NESHAP. In DOJ's opinion, the relief afforded by consent decrees should be tailored to a good faith reading of the scope of injunctive relief available under the applicable statute and regulation.

Some demolition contractors are sensitive to the fact that their competitors might underbid a job with the expectation of circumventing compliance with the notice or work practice requirements of the asbestos NESHAP. If contractors are interested in reporting suspected underbidding to the Agency, we encourage them to do so. Such information should only be submitted on a voluntary basis, however, and not as part of a written, enforceable obligation. Any questions concerning the policy established by this memorandum may be directed to Lynn Holloway of the Air Enforcement Division at FTS 260-3878.

Addressees: Regional Administrators, Regions I-X

 Regional Counsel, Regions I-X

 Air Management Division Director
 Region I

 Air and Waste Management Division Director
 Region II

 Air, Toxics and Radiation Management Division
 Director
 Region III

 Air, Pesticides and Toxics Management Division
 Director
 Region IV

 Air and Radiation Division Director
 Region V

 Air, Pesticides and Toxics Division Director
 Region VI

 Air and Toxics Division Directors
 Regions VII, VIII, IX and X

cc:

John C. Cruden, Chief
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